IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8936 of 2000

For Approval and Signature:

HON'BLE MR JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Petitioner(s)

Versus

RAMDE MULUBHAI - Respondent(s)

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Appearance :

GOVERNMENT PLEADER for Petitioner No(s).: 1.

M/S THAKKAR ASSOC. for Respondent No(s).: 1.

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CORAM : HON'BLE MR JUSTICE KS JHAVERI

Date : 01/08/2005

ORAL JUDGMENT

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1.0 The petitioner State has prayed to quash and set aside the order dated 01.10.1986, at Annexure- 'A' and

the subsequent orders at Annexures – 'B' & 'C' to the petition and the final order of recovery dated 26.02.1999 passed in Recovery Application No. 109 of 1997.

2.0 The brief facts of the case are that the respondent herein had worked with the petitioner State for about 26 years. On 01.02.1982 the services of the respondent were discontinued. Against the said action, the respondent raised an industrial dispute, which, ultimately, culminated into a reference being Reference L.C.R. No.994 of 1982. The said reference was disposed of by the Labour Court, Rajkot, vide award dated 01.10.1986, at Annexure – 'A' to the petition.

2.1 Against the said award, the petitioner filed restoration application which was numbered as 64 of 1987 and the Labour Court vide order dated 10.10.1993, at Annexure – 'B' to the petition, allowed the said application, on condition that the petitioner deposits an amount of Rs.5,000/- within a period of one month from the date of the order. It is the case of the petitioner that on account of some administrative reasons, the said order dated 10.10.1993 could not be complied with.

2.2 Pursuant to the above, the respondent filed Recovery Application No.109 of 1997 which came to be allowed vide order dated 26.02.1999, at Annexure – 'C' to the petition. Thereafter, the Labour Court issued recovery certificate against the petitioner in order to recover the amount under the provisions of the Bombay Land Revenue Code. Hence, this petition.

3.0 I have heard learned counsel for the parties and perused the documents placed on record. While issuing Notice on 22.08.2000, this Court by way of ad-interim relief, had stayed the operation of the impugned orders, on condition that as per the statement made by the Government Pleader, an affidavit prepared in consultation with the Government Pleader as regards the lapses in defending the case of the petitioner Department shall be filed on the returnable date. The said relief was converted into interim relief while admitting the matter on 07.07.2001. However, no affidavit as directed by this Court has been filed on behalf of the petitioner State till today.

3.1 It is required to be noted that the impugned award was passed on 01.10.1986. The said award was sought to be

challenged after almost fourteen years. In my opinion, the petition requires to be rejected on the ground of delay itself, since in spite of the orders of this Court, no explanations have been given as to why lapses had occurred while defending the case of the petitioner Department. Moreover, the order is sought to be challenged after the order under Section 33(C)(1) of the I.D. Act came to be passed. In the case on hand, rights have been created in favour of the workman which cannot be withdrawn after almost fourteen years of delay.

3.2 In the case of Dhirajlal Madhavlal Bharati v. R. S. Shukla reported in 1981 G.L.H. pg. 89, it has been held that delay may not be condoned, if the result would be to promote injustice suffered by a poor victim or which would result in the relief given to a poor victim being denied to him by re-opening a closed Chapter wherein substantial justice has been done in favour of a sufferer of injustice. In order words, to help promote justice on merit, 'always', to promote injustice 'never'. Hence, no case is made out for interference by this Court in this petition.

4.0 In above view of the matter, the petition is

rejected. The order dated 01.10.1986 at Annexure-A and the subsequent orders at Annexures-B & C to the petition and the final order of recovery dated 26.02.1999 passed in Recovery Application No.109 of 1997 are confirmed. Rule is discharged with no order as to costs.

(K. S. JHAVERI, J.)

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